

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE,  
THE DELAWARE ENERGY OFFICE,  
THE OFFICE OF MANAGEMENT AND BUDGET,  
AND THE CONTROLLER GENERAL**

IN THE MATTER OF INTEGRATED RESOURCE )  
PLANNING FOR THE PROVISION OF )  
STANDARD OFFER SUPPLY SERVICE BY )  
DELMARVA POWER & LIGHT COMPANY UNDER )  
26 *DEL. C.* § 1007(c) & (d): REVIEW )  
AND APPROVAL OF THE REQUEST FOR )  
PROPOSALS FOR THE CONSTRUCTION OF NEW )  
GENERATION RESOURCES UNDER 26 *DEL. C.* )  
§ 1007(d) (OPENED JULY 25, 2006) )

PSC DOCKET NO. 06-241

**RESPONSE IN OPPOSITION OF ALAN MULLER AND GREEN DELAWARE  
TO CONECTIV'S PETITION FOR REHEARING AND RECONSIDERATION**

**I. INTRODUCTION**

Conectiv Energy Supply, Inc. (hereinafter "Conectiv") has submitted a Petition for Rehearing and Reconsideration dated June 11, 2007, requesting expedited consideration at the June 19, 2007, meeting.

The DNREC (Energy Office), the Office of Controller General, and Office of Management and Budget all concurred in the Order. All four agencies would have to concur in granting the CESI Petition.

The Commission has not acquiesced to Conectiv's demand for expedited review, instead providing reasonable opportunity for response by parties of interest.

Alan Muller and Green Delaware have been active participants in the Public Service Commission's Request for Proposal docket (06-241, hereinafter "RFP docket") and Muller is a full party in the Integrated Resource Planning docket (07-20, hereinafter "IRP docket"). There are no formal parties in the RFP docket. Muller and Green Delaware have standing for this response by Commission authorization to appear in this proceeding, and by prior active participation as parties of interest.

Alan Muller and Green Delaware concur in general with the PSC Staff Response and incorporate the conclusions of that Response here as if fully related within.

We also concur with most of the points made in the Bluewater Wind response. In particular, we understand Bluewater Wind's concerns about confidentiality of information given to Delmarva Power, should Conectiv, a corporate relative of Delmarva Power, be allowed to submit a wind bid at this late date.

Responses in various forms have been sent to the Commission by Jeremy Firestone, the League of Women Voters of Delaware, the PSC Staff, Bluewater Wind, NRG Energy, Citizens for a Better Sussex, Citizens for Clean Power, Coalition for Climate Change Study and Action, and several individuals. All oppose the CESI request, as do we.

## **II. THE STATUTORY INTENT IS TO RESPONSIBLY FULFILL DELAWARE'S ENERGY NEEDS**

The purpose and intent of the Electric Utility Retail Customer Supply Act of 2006, 26 Del. C. §1001, et seq. ("EURCSA") was to address failures of deregulation, and to stabilize "Standard Offer Service" rates to the extent possible under the now-existing regulatory scheme. Accepted principles of statutory interpretation favor the plain language of the statute and oppose interpretations leading to absurd results

The EURCSA took a broad approach, mandating Integrated Resource Planning and solicitation of bids. These are not separate under the language of the statute:

*As part of the initial IRP process, to immediately attempt to stabilize the long-term outlook for Standard Offer Supply in the DP&L service territory, DP&L shall file on or before August 1, 2006 a proposal to obtain long-term contracts. The application shall contain a proposed form of request for proposals ("RFP") for the construction of new generation resources within Delaware for the purpose of serving its customers taking Standard offer Service. 26 Del. C. §1007(d).*

The two are integral parts, not independent, to be implemented in tandem within the parameters of the statute, to optimize "economic and environmental" values. Integrated resource planning requires that larger policy issues of hierarchy of generation, sustainability, energy independence, and other, be considered, together with stabilizing rates:

*1. As part of its IRP process, DP&L shall not rely exclusively on any particular resource or purchase procurement process. In its IRP, DP&L shall explore in detail all reasonable short- and long-term procurement or Demand-Side Management strategies, even if a particular strategy is ultimately not recommended by the Company. At least 30 percent of the resource mix of DP&L shall be purchases made through the regional wholesale market via a bid procurement or auction process held by DP&L. Such process shall be overseen by the Commission subject to the procurement process approved in PSC Docket #04-391 as may be modified by future Commission action.*

*2. In developing the IRP, DP&L may consider the economic and environmental value of:*

- (i) resources that utilize new or innovative baseload technologies (such as coal gasification);*
- (ii) resources that provide short- or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power);*
- (iii) facilities that have existing fuel and transmission infrastructure;*
- (iv) facilities that utilize existing brownfield or industrial sites;*
- (v) resources that promote fuel diversity;*
- (vi) resources or facilities that support or improve reliability; or*
- (vii) resources that encourage price stability.*

*The IRP must investigate all potential opportunities for a more diverse supply at the lowest reasonable cost.*

26 Del. C. §1007(c)(1)1-2. Further, the Commission has express authority to approve:

- a. proposals that utilize new or innovative baseload technologies,
- b. proposals that provide long-term environmental benefits to the state,
- c. proposals that have existing fuel and transmission infrastructure,
- d. proposals that promote fuel diversity,
- e. proposals that support or improve reliability, and
- f. proposals that utilize existing brownfield or industrial sites.

26 Del. C. 1007(d)(3).

The PSC has wide latitude, in reviewing the RFPs under the umbrella of the IRP, to protect the public interest and set energy policy within the parameters of the statute. That broad authority of the

Commission includes authority to modify and deviate from specific proposals in its analysis,

recommendations and conclusions, consistent with the legislative mandate. Staff Response, p. 9-10,

citing *State v. Worsham*, 638 A.2d 1104, 1107 (Del. 1994); *Atlantis I Condo. Ass'n v. Bryson*, 403 A.2d

711, 713 (Del. 1979), etc. The PSC Staff and Commission have authority to Order a wind/gas hybrid.

### **III. THE RFP DOCKET HAS NO FORMAL PARTIES – CONECTIV IS NOT A PARTY!**

There are no formal parties to this docket, no Intervenor and no Interventions granted. There are, however RFP bidders and many active commenters. The language of the Commission's Rules of Practice and Procedure is clear: Rule 34(b), as Conectiv correctly states, allows 'any party' to petition for rehearing and reconsideration.

In this RFP docket, there are no formal parties, only "participants," etc. This issue of party status has been addressed informally by Firestone and PSC staff. At no time did Conectiv, or any other participant in this docket, file a Petition for Leave to Intervene as required, and there has been no Commission Order granting party status. Rule 21, Rules of Practice and Procedure of the Commission; see also Staff Response, p. 15.. Under Rules 21 and 34(b), Conectiv is not a party and has no right to file a Petition for

That said, it appears reasonable to afford those participating to continue participating as they have. There is precedent in this docket for these levels of participation, but the record is clear – there are no formal parties in Docket 06-241.

#### **IV. IN AN RFP DOCKET, CONECTIV HAS NO RIGHT, AND NO RECOURSE**

Conectiv is not pleased with the Commission Order, but PSC Staff correctly argues that Conectiv has no right in this proceeding. Staff Response, p. 12-15. There is no property or liberty interest at stake, and there is no impact on Conectiv's right to do business. *Goldberg v. Kelly*, 397 U.S. 254, 263-271. The RFP docket was an opportunity to submit a proposal, nothing more. The RFP specifically and plainly stated that there is no recourse for bidders. RFP, para. 1.6. Conectiv has no basis for its Petition for Reconsideration and Rehearing.

#### **V. DELAWARE PUBLIC SERVICE COMMISSION RULE 34**

**This** Rule appears to govern the Conectiv filing, and reads in full as follows:

(b) **Petition for Rehearing and Reconsideration.** Within thirty (30) days from the entry of an Order or decision of the Commission, any party may petition for rehearing and reconsideration, which shall set forth in numbered paragraphs the grounds for rehearing and reconsideration **that are different from the arguments previously made to the Commission.** Other parties shall have seven (7) days to file an answer. The Commission, in its discretion, may grant or deny the petition without a hearing, or set a hearing

thereon. The filing of a timely petition for rehearing shall suspend the finality of the order that is the subject of the petition.

(c) If the Commission takes no action on a petition within sixty (60) days of the entry date of the Order, then the petition for rehearing and reconsideration shall be deemed denied by operation of law, and the Secretary shall notify in writing all parties of such denial by operation of law.

This matter has been so extensively discussed, publicly, in formal and informal correspondence with the Commission and its Staff, and before the Commission itself, that it would not be easy to raise “grounds ... that are different from the arguments previously made to the Commission.”

Conectiv has not done so, but rather has rehashed points previously made many times before. For example, Conectiv argues, in effect, that only price should count, disregarding the importance of price stability, reliability, health and environmental benefits and other values specifically called out in EUCRSA.

To put this another way, Conectiv seeks consideration of “price” but not “cost,” presumably because the “cost,” including the thousands of Delawareans sickened and killed each year by power plant emissions (frequently Conectiv emissions), are not born by Conectiv. They ARE born by ratepayers in many other ways, such as health care expenses.

Conectiv insults all concerned by stating: *“It is easy for the State Agencies to capitulate to public opinion and to conclude that wind generation is more environmentally friendly than generation from fossil fuels. However, the General Assembly did not direct the State Agencies to automatically select the most environmentally friendly proposal.”*

Green Delaware has long experience with Conectiv (Delmarva Power, etc) and has found these companies to be consistently among Delaware’s worst environmental offenders. Again, we note that Conectiv is appealing the state regulation calling for a cleanup of the existing Conectiv Edge Moor units.

Again, we call on the State Agencies to reject bids from entities, including Conectiv and NRG (also appealing), indicating they don’t want to comply with Delaware’s environmental laws and regulations. Such entities have no credibility in seeking approval to build additional facilities.

## **V. THE CONECTIV RFP “BID” AND NRG’S RESPONSE TO THE CONECTIV PETITION**

During extensive public discussion and review of the bids from Bluewater, NRG, and Conectiv, little if any support was head for the Conectiv proposal. This is not surprising when we consider that the proposal was for nothing more than expansion of the existing gas/light oil fired Hay Road power plant in Northern Delaware, on the same site as the Edge Moor coal/oil/garbage fume units. The Conectiv bid failed to address concerns about fuel diversity, local generation, reliability, reactive power support, emissions reduction in the vicinity of the Indian River Power Plant, and other public concerns, all of which are addressed to some degree in the Orders issued in this docket.

With (perhaps excessive) consideration for Conectiv interests, the Commission specifically allowed Conectiv to offer a gas-fired (backup to wind) plant in Sussex County, in competition with NRG. Never satisfied, Conectiv complains that “The State Agencies, therefore, erred: (1) by rejecting the Hay Road Proposal as a competitive option for the back-up gas generation component of the hybrid approach, and (2) by failing to permit either CESI or NRG to submit a wind generation proposal to compete with BWW.”

At no time during the RFP process did either Conectiv or NRG express any interest in submitting a wind bid, and they have no valid complaint now.

NRG, in its Response, “...urges the State Agencies to reaffirm their conclusion that Pursuant to Order No. 7199, any proposed facility for back-up generation must be located in Sussex County, Delaware.” This is a reasonable request, since this WAS the intent of the Commission, and many interested parties have indicated their support for local generation in Southern Delaware.

## **VI. CONCLUSION – CONECTIV’S PETITION SHOULD BE DISMISSED**

Alan Muller and Green Delaware request that the Petition of Conectiv for Reconsideration and Rehearing be denied because (1) Conectiv has no standing to make such a Petition; (2) because the Commission acted within its authority; (3) and because Conectiv has no right at issue, (4) as a failed bidder under the express terms of the RSP, Conectiv has no recourse, and (5) because the outcomes

sought by Conectiv are inconsistent with the intent of EUCRSA and the expressed wishes of the people of Delaware.

We recommend that the Commission, clarify, per the request of NRG energy, that a gas backup facility (backup to the proposed BWW wind park proposal) be located in Sussex County.

Dated: June 28, 2007

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**ORDER OF THE COMMISSION**

**AND NOW**, this \_\_\_\_ day of July, 2007, **IT IS HEREBY ORDERED:**

1. That the Connective Energy Supply, Inc.'s Petition for Rehearing and Reconsideration is hereby denied.
2. That the Order of the State Agencies' dated May 22, 2007, is affirmed.
3. That the intent of the PSC is that a gas backup facility be located in Sussex County.

**BY ORDER OF THE DELAWARE PUBLIC SERVICE COMMISSION,  
THE DELAWARE ENERGY OFFICE,  
THE CONTROLLER GENERAL  
DIRECTOR OF THE OFFICE OF MANAGEMENT & BUDGET**

**DELAWARE DEPARTMENT OF NATURAL  
RESOURCES AND ENVIRONMENTAL  
CONTROL**

**Secretary**

**DELAWARE PUBLIC SERVICE COMMISSION**

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Chair

**CONTROLLER GENERAL**

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**DIRECTOR OF THE OFFICE OF  
MANAGEMENT AND BUDGET**

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ATTEST:

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Secretary